

sanctions are threatened or imposed. Keeping Congressional advisers in the monitoring and enforcement loop tends to be episodic. It should be systematic.

The Guidelines should provide for consultations with Congressional advisers on monitoring and enforcement at least every two months. These consultations should not just highlight problems. They should provide a complete picture of how the Executive Branch is deploying its monitoring and enforcement resources. They should identify where these efforts are succeeding, as well as where they require reinforcement.

In conclusion, the Trade Act of 2002 represents a watershed in relations between the Executive and Legislative Branches when it comes to trade policy and negotiations. Before the Trade Act, the Executive Branch generally took the lead, and the involvement of Congressional advisers tended to be cursory and episodic. In the Trade Act, Congress sent a clear message that the old way will not do.

From now on, the involvement of Congressional advisers in developing trade policy and negotiations must be in depth and systematic. Congress can no longer be an afterthought. The Trade Act establishes a partnership of equals. It recognizes that Congress's constitutional authority to regulate foreign trade and the President's constitutional authority to negotiate with foreign nations are interdependent. It requires a working relationship that reflects that interdependence.

Our first opportunity to memorialize this new, interdependent relationship is only weeks away. I am very hopeful that the Administration will work closely with us in developing the Guidelines to make the partnership of equals a reality.

#### EXHIBIT 1

#### TREATIES AND OTHER INTERNATIONAL AGREEMENTS: THE ROLE OF THE UNITED STATES SENATE

On occasion Senators or Representatives have served as members of or advisers to the U.S. delegation negotiating a treaty. The practice has occurred throughout American history. In September 1898, President William McKinley appointed three Senators to a commission to negotiate a treaty with Spain. President Warren G. Harding appointed Senators Henry Cabot Lodge and Oscar Underwood as delegates to the Conference on the Limitation of Armaments in 1921 and 1922 which resulted in four treaties, and President Hoover appointed two Senators to the London Naval Arms Limitation Conference in 1930.

The practice has increased since the end of the Second World War, in part because President Wilson's lack of inclusion of any Senators in the American delegation to the Paris Peace Conference was considered one of the reasons for the failure of the Versailles Treaty. Four of the eight members of the official U.S. delegation to the San Francisco Conference establishing the United Nations were Members of Congress: Senators Tom Connally and Arthur Vandenberg and Representatives Sol Bloom and Charles A. Eaton.

There has been some controversy over active Members of Congress serving on such

delegations. When President James Madison appointed Senator James A. Bayard and Speaker of the House Henry Clay to the commission that negotiated the Treaty of Ghent in 1814, both resigned from Congress to undertake the task. More recently, as in the annual appointment of Senators or Members of Congress to be among the U.S. representatives to the United Nations General Assembly, Members have participated in delegations without resigning, and many observers consider it "now common practice and no longer challenged."

One issue has been whether service by a Member of Congress on a delegation violated Article I, Section 6 of the Constitution. This section prohibits Senators or Representatives during their terms from being appointed to a civil office if it has been created or its emoluments increased during their terms, and prohibits a person holding office to be a Member of the Senate or House. Some contend that membership on a negotiating delegation constitutes holding an office while others contend that because of its temporary nature it is not.

Another issue concerns the separation of powers. One view is that as a member of a negotiating delegation a Senator would be subject to the instructions of the President and would face a conflict of interest when later required to vote on the treaty in the Senate. Others contend that congressional members of delegations may insist on their independence of action and that in any event upon resuming their legislative duties have a right and duty to act independently of the executive branch on matters concerning the treaty.

A compromise solution has been to appoint Members of Congress as advisers or observers, rather than as members of the delegation. The administration has on numerous occasions invited one or more Senators and Members of Congress or congressional staff to serve as advisers to negotiations of multilateral treaties. In 1991 and 1992, for example, Members of Congress and congressional staff were included as advisers and observers in the U.S. delegations to the United Nations Conference on Environment and Development and its preparatory meetings. In 1992, congressional staff advisers were included in the delegations to the World Administrative Radio Conference (WARC) of the International Radio Consultative Committee (CCIR) of the International Telecommunications Union.

In the early 1990s, Congress took initiatives to assure congressional observers. The Senate and House each designated an observer group for strategic arms reductions talks with the Soviet Union that began in 1985 and culminated with the Strategic Arms Reduction Treaty (START) approved by the Senate on October 1, 1992. In 1991, the Senate established a Senate World Climate Convention Observer Group. As of late 2000, at least two ongoing groups of Senate observers existed:

1. Senate National Security Working Group.—This is a bipartisan group of Senators who "act as official observers to negotiations \* \* \* on the reduction or limitation of nuclear weapons, conventional weapons or weapons of mass destruction; the reduction, limitation, or control of missile defenses; or related export controls."

2. Senate Observer Group on U.N. Climate Change Negotiations.—This is a "bipartisan group of Senators, appointed by the Majority and Minority Leaders" to monitor "the status of negotiations on global climate change and report[ing] periodically to the Senate \* \* \*."

#### OUR LADY OF PEACE ACT

Mr. LEVIN. Mr. President, a sensible gun safety measure has been recently passed by our colleagues in the House of Representatives. The "Our Lady of Peace Act" was first introduced by Representative CAROLYN MCCARTHY after Reverend Lawrence Penzes and Eileen Tosner were killed at Our Lady of Peace church in Lynbrook, NY on March 12, 2002. These deaths may have been prevented if the assailant's misdemeanor and mental health records were part of an automated and complete background check system.

According to the House Judiciary Committee Report on the bill, 25 States have automated less than 60 percent of their felony criminal conviction records. While many States have the capacity to fully automate their background check systems, 13 States do not automate or make domestic violence restraining orders accessible through the National Instant Criminal Background Check System, otherwise known as NICS. Fifteen States do not automate domestic violence misdemeanor records or make them accessible through NICS. Since 1994, the Brady Law has successfully prevented more than 689,000 individuals from illegally purchasing a firearm. More ineligible firearm purchases could have been prevented, and more shooting deaths may have been avoided had state records been fully automated.

The Our Lady of Peace Act would require Federal agencies to provide any government records with information relevant to determining the eligibility of a person to buy a gun for inclusion in NICS. It would also require states to make available any records that would disqualify a person from acquiring a firearm, such as records of convictions for misdemeanor crimes of domestic violence and individuals adjudicated as mentally defective. To make this possible, this bill would authorize appropriations for grant programs to assist States, courts, and local governments in establishing or improving automated record systems. I hope we can move in this direction this Congress or next.

#### ASSISTANCE FOR SOUTH DAKOTA MEDICARE BENEFICIARIES AND PROVIDERS

Mr. JOHNSON. Mr. President, one of the key remaining issues of the 107th Congress that I believe must be addressed yet this year is Medicare relief for rural health care providers and beneficiaries. Recently, bipartisan legislation was introduced, called the Beneficiary Access to Care and Medicare Equity Act of 2002, S. 3018, that will provide definitive steps to strengthen South Dakota's rural health care delivery system. I am pleased to be a co-sponsor of this bill.

The legislation will provide \$43 billion over ten years for provider and beneficiary improvements in the Medicare and Medicaid programs. Earlier